

# Judicial procedure

in aliens and nationality cases



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## Foreword

A new kind of court and rules of procedure will be introduced with effect 31 March 2006 for aliens and nationality matters. Appeals against decisions of the Swedish Migration Board will be made to certain County Administrative Courts, 'Migration Courts'. Decisions of the Migration Courts can be appealed against to the Migration Court of Appeal, which is part of the Administrative Court of Appeal in Stockholm. These changes are in line with the new Aliens Act, which will enter into force at the same time.

Information is provided in this brochure on form of the judicial procedure when someone appeals against a decision made by the Swedish Migration Board in an aliens or nationality matter.

The brochure explains the general procedure in the general administrative courts and specifically describes the procedure in aliens and nationality cases.

The brochure is aimed first at those involved in informing others about the court procedure when decisions of the Swedish Migration Board are appealed against, and also at people looking for information about the new procedure themselves.

## The courts

The courts are divided into general courts, general administrative courts and special courts. The general courts are the District Courts, the Courts of Appeal and the Supreme Court. The kinds of cases dealt with by the general courts are mainly criminal cases and disputes between private individuals (contentious civil cases).

The general administrative courts are the County Administrative Courts, the Administrative Courts of Appeal and the Supreme Administrative Court. Their task is primarily to resolve disputes between private individuals, companies, organisations, and others, and some part of the public administrative services such as central and local government ('the government').

There are also some special courts that determine disputes involving certain special areas of law. The Labour Court and the Market Court are two examples of such special courts.

According to the Constitution, the courts enjoy independent status. Neither the Riksdag (the Swedish Parliament) nor any other public authority can determine how a court should adjudicate in a particular case.

### **General courts:**

District Court  
Court of Appeal  
Supreme Court

### **General administrative courts:**

County Administrative Court  
Administrative Court of Appeal  
Supreme Administrative Court

### **Special courts:**

Labour Court  
Market Court

## General administrative courts

There are County Administrative Courts in 23 districts in Sweden. The decisions of the County Administrative Courts can be appealed against to the Administrative Courts of Appeal, which are located in four districts.

Decisions of the Administrative Courts of Appeal can in most cases be appealed against to the Supreme Administrative Court, which is the final instance.

Cases in the administrative courts can involve an extremely broad range of matters, such as tax, social insurance issues, the right to financial assistance, psychiatric care and other compulsory care.

The composition of the court in the County Administrative Courts and the Administrative Courts of Appeal can vary depending on what kind of case is being dealt with. In most cases in the County Administrative Courts a legally qualified judge and three lay judges jointly adjudicate in cases. The lay judges are appointed by the County Council assembly.

In most cases in the Administrative Court of Appeal, three members who are legally qualified determine the cases. Lay judges are only included as members in certain kinds of case. Issues concerning leave to appeal are determined by two judges.

### Summary

The courts comprise general courts, general administrative courts and special courts.

The general administrative courts resolve disputes between private individuals, companies, organisations, and others and some part of the public administrative services ('the government').

The Constitution provides that the courts must be independent in their adjudicating activities.

## Administrative court procedure

The Administrative Court Procedure Act (1971:291) governs the procedure in the general administrative courts. Some knowledge of this system makes it easier to understand how the Migration Courts and the Migration Court of Appeal function. As regards the Migration Courts and the Migration Court of Appeal, the Administrative Court Procedure Act is supplemented with special provisions contained in the Aliens Act (2005:716) and the Swedish Nationality Act (2001:82). See page 9.

The Administrative Court Procedure Act governs the administration of justice within the general administrative courts, to which the Migration Courts and the Migration Court of Appeal belong. The Act regulates each step in the course of the proceedings – from when a case has been received until the final determination. The Administrative Court Act (1971:289) stipulates who should be given notice to attend the hearings and which members should comprise the court. For example, there should normally be lay judges in the County Administrative Courts, but only in certain cases in the Administrative Court of Appeal.

### Investigation

One important rule is the ‘principle of official processing’. This means that the court should ensure that the case is sufficiently investigated. The full extent of this responsibility may vary in different kinds of case.

A case is normally started by an appeal or an application being sent to the court. The court is then responsible for the other party being served with the appeal or the application by post. A written answer should be submitted in response, unless the court decides that an answer may be provided at an oral hearing. In the answer, the other party’s position should be explained, namely, whether the applications are contested or consented to, or whether the measure in question is opposed. The reasons for other party’s position must also be explained together with the evidence to be relied on. The answer is then sent to the applicant or the appellant for views or for information. This ‘communication’ continues until the case has been so clearly established that it is ready to be determined.

### Presentation

In a general administrative court, most cases are determined following a case review. This means that the case is reviewed orally for the legally qualified judge and lay judges. Before the review, the judges will also have been given access to all written documents in the case. In the course of this review, an explanation is provided regarding the facts of the case and the legal investiga-

tion that has been carried out, with reference to the relevant statutory provisions and legal cases, and also any relevant legal literature. Earlier cases that can be regarded as forming legal practice (precedents) and providing a guide are given particular attention.

## Selecting the approach

Normally the procedure is in writing but the court may, however, decide that an oral hearing should be held when it is considered that this will be beneficial for the investigation or if it would result in a rapid determination of the case. Oral hearings can also be requested by the parties to the case.

## Oral hearing

An oral hearing does not replace the written procedure in a case. The aim of an oral hearing is to supplement the investigation but also to allow the parties to further explain their cases.

At an oral hearing, a legally trained judge is the ‘chairperson’. The chairperson leads the hearing and ensures that the legal rules are complied with. The chairperson should also provide the court and the parties with an opportunity to present questions and ensure that all unclear items are clarified.

The persons called to the oral hearing are as follows:

- The parties
- Any representatives or public counsel
- Any witnesses and experts
- Interpreter, when someone involved in the hearing does not speak Swedish

The case is usually outlined for the court before the hearing starts. The oral hearing then continues in the following way:

- The case is called and the parties and any witnesses are summoned into the courtroom.
- An attendance check is carried out – the chairperson checks that everyone has arrived. It may be necessary to postpone the hearing to a later date if someone has not turned up.
- After the attendance check has been carried out, the witnesses should leave the courtroom. They will be called back in when it is time to question them.
- The court can decide that the hearing should be held behind closed doors (in camera) if information will be disclosed that is subject to secrecy. (Read more about this later under the heading ‘Behind closed doors’.)

- The chairperson starts the hearing by briefly describing the content of the documents, and explaining that a report reviewing the case has been presented before the hearing and that the court members are acquainted with the material. It is also confirmed that the documents represent material in the proceedings even if their content will not be referred to again before the court.
- The appellant's/applicant's applications and grounds are explained.
- The other party's opinion on the applications and grounds are explained.
- The appellant/applicant is allowed to explain the grounds for his/her position.
- Evidence is gathered, i.e. any witnesses and experts are questioned. They must swear an oath and the hearings are recorded on tape.
- The parties conclude their arguments. The appellant or the person against whom the application is directed has the last word.
- The hearing is concluded and the chairperson states when and how the judgment in the case will be issued. The determination of the court is then based on both the written documentation and the oral hearing.

## Determination

After presentation of the report, and any supplementary oral hearing, the court will hold 'deliberations'. During these, conceivable decisions and various views for and against them will be discussed. In most cases, the subsequent decision is unanimous. If it is not possible to agree, there will be a vote and the opinion that is supported by more than half of the members will apply. The chairperson has a casting vote. A member who does not wish to support the determination that the court has decided on may express reservations, that is, provide a 'dissenting opinion'.

### Summary

The County Administrative Courts, the Administrative Courts of appeal and the Supreme Administrative Court are general administrative courts.

The operations of the administrative courts are basically governed by the Administrative Court Procedure Act.

The court is responsible for ensuring that the investigation of the case is properly conducted.

The administrative courts normally adopt a written procedure.

An oral hearing may supplement the written procedure.



## Key issues regarding aliens and nationality cases in court

Cases in the Migration Courts and in the Migration Court of Appeal are basically dealt with in the same way as other administrative law cases. However, there are important differences. These differences result from the Aliens Act (2005:716) and the Swedish Nationality Act (2001:82). You can read more about the characteristic features of aliens and nationality cases below.

### Migration Courts and the Migration Court of Appeal

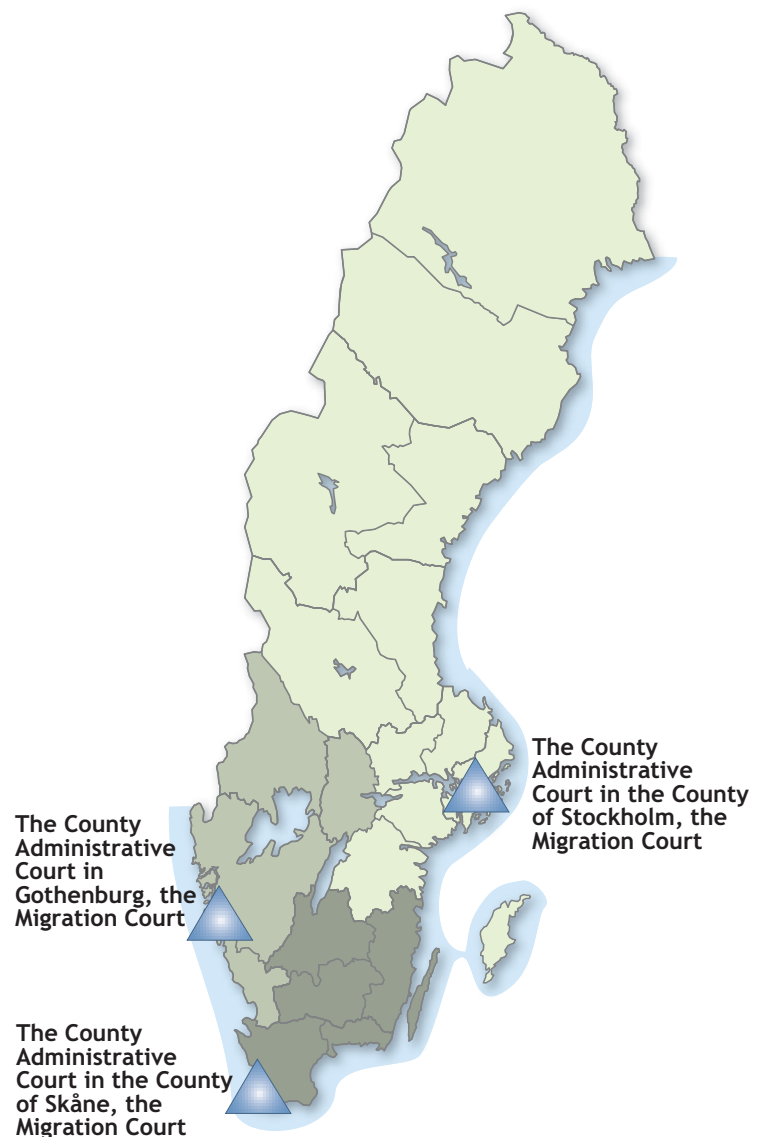
Decisions of the Swedish Migration Board in aliens and nationality matters can be considered by a migration court. The procedure is a two-party procedure, which means that the applicant and the Swedish Migration Board meet as two parties in a Migration Court.

Three of the County Administrative Courts in Sweden, namely the County Administrative Court for the County of Stockholm, the County Administrative Court for the County of Skåne and the County Administrative Court for Gothenburg are Migration Courts.

The Administrative Court of Appeal in Stockholm is the Migration Court of Appeal.

### Judicial districts of the Migration Courts

Which Migration Court will consider a decision of the Swedish Migration Board depends on where in Sweden the Board made its decision. The judicial districts are divided into three geographical catchment areas.



*Judicial districts of the Migration Courts*

Decisions of the Migration Courts can be appealed against to the Migration Court of Appeal, which is part of the Administrative Court of Appeal in Stockholm. However, it is not possible to appeal against decisions of the Migration Court of Appeal to the Supreme Administrative Court, which is the final instance in other cases in the general administrative courts. For aliens and nationality cases, the Migration Court of Appeal is consequently the final instance.

### **Oral hearing in aliens cases**

The main rule in aliens cases is, as in other cases in a general administrative court, that the procedure should be in writing. However, because of the nature of some of the cases, it is common for oral hearings to be held at a Migration Court if the appellant so requests. This applies particularly in cases relating to applications for asylum.

### **Behind closed doors (in camera)**

A basic rule in Sweden is that court hearings are public. This means that the public and media can attend the hearing. However, there are rules in the Secrecy Act (1980:100) that protect the private individual's personal circumstances. Secrecy can apply especially in asylum cases where details about the individual's circumstances, such as details of persecution, torture, etc., are referred to. The hearing can take place behind closed doors (in camera) in order to protect a private individual. In principle, at such a hearing only the members of the court, the parties and their representatives as well as an interpreter may be present in the courtroom.

### **Lay judges in the Migration Courts**

Lay judges participate in determinations made by Migration Courts. However, there are no lay judges in the Migration Court of Appeal.

### **Leave to appeal**

It is the Migration Court of Appeal that decides whether leave to appeal should be granted in a case. Leave to appeal is required to allow a decision of the Migration Court to be reconsidered in full by the Migration Court of Appeal.

The Migration Court of Appeal can grant leave to appeal in the event of ‘precedence exemption’ or ‘extraordinary exemption’. Precedence exemption means a case that is believed can provide guidance for future decisions. Extraordinary exemption means that there are extraordinary reasons to consider the appeal. For instance, one example would be if the Migration Court committed some serious error when processing the matter.

If leave to appeal is not granted, the determination of the Migration Court shall remain in force.

If leave to appeal is granted, this means that the processing of the case continues and is finally determined in the Migration Court of Appeal.

## Guiding rulings

Rulings in cases where leave to appeal has been granted provide guidance (precedents) for decisions of the Migration Courts and the Swedish Migration Board in similar matters. The rulings of the Migration Court of Appeal are published in Swedish on the website <http://www.lagrummet.se>

### Summary

Decisions of the Swedish Migration Board can be appealed against to a Migration Court, where the parties meet in a two-party process.

Migration Courts form part of the County Administrative Courts in the counties of Stockholm, Skåne and Gothenburg.

Determinations of the Migration Courts can be appealed against to the Migration Court of Appeal, which forms part of the Administrative Court of Appeal in Stockholm.

Leave to appeal is required in order that the Migration Court of Appeal can consider a case.

The Migration Court of Appeal is the final and precedent-forming instance.

## Decisions that can be appealed against

It has already been mentioned that it is the task of the Migration Courts to review decisions of the Swedish Migration Board in aliens and nationality matters. Some decisions that can be appealed against are described below:

### **Rejection of applications for various kinds of residence permit**

A residence permit can be granted to an applicant who is already in Sweden or an applicant who is abroad. A person who is in Sweden can apply for asylum. Asylum is a residence permit that is given to a refugee. Consequently, if such an application is rejected, a decision will also be made regarding 'refusal of entry' or 'deportation', which means that the applicant must leave Sweden. Both decisions can be appealed against.

A decision of the Swedish Migration Board not to grant a residence permit to someone who is abroad and who, for example, wants to study or wants to be united with his/her family in Sweden, can also be appealed against.

### **New consideration of residence permit matters**

Even if there is a final determination of refusal of entry or deportation that should be enforced, a residence permit matter may, subject to certain preconditions, be considered again by the Swedish Migration Board. This may, for example, happen when something has occurred in the person's home country, which means that it is impossible to return. A decision not to grant further consideration can be appealed against.

### **Decision on detention**

The Swedish Migration Board can make decisions whereby a person's liberty is removed, that is, the person is held in detention. For example, such a decision can be made when there is a risk that the person will go into hiding when a decision on refusal of entry is to be enforced. Such a decision on detention can be appealed against.

### **Swedish nationality**

A decision of the Swedish Migration Board on Swedish nationality can be appealed against when it relates to a rejection of an application for Swedish nationality, retention of Swedish nationality or release of Swedish nationality.

## From application to final determination

If a person's application is rejected by the Swedish Migration Board, the decision can be appealed against. The single largest category of decisions of the Swedish Migration Board that are appealed against are those relating to applications for asylum. A description is provided below of what happens when the Swedish Migration Board has rejected an application for asylum and the person who has applied then appeals to court. In broad terms, this system applies to most decisions of the Swedish Migration Board that are appealed against.

An asylum application is submitted to the Swedish Migration Board, which will either grant it or reject it. If the Swedish Migration Board grants the application, a residence permit will be issued. In the event of rejection, the Swedish Migration Board will also make a decision on refusal of entry or, if the person who made the application is in Sweden, on deportation.

A decision of the Swedish Migration Board to reject an asylum application and simultaneous decision on refusal of entry or deportation can be appealed against. Appeals are submitted to the Swedish Migration Board, which will first reconsider its decision. If the Swedish Migration Board does not amend the decision, the appeal will be forwarded to a Migration Court.

In the Migration Court, the Swedish Migration Board will be the opponent of the person who applied for asylum. The asylum seeker will often be represented by public counsel. The determination of the Migration Court can be appealed against to the Migration Court of Appeal. Appeals should be submitted to the Migration Court, which will forward the documents to the Migration Court of Appeal.

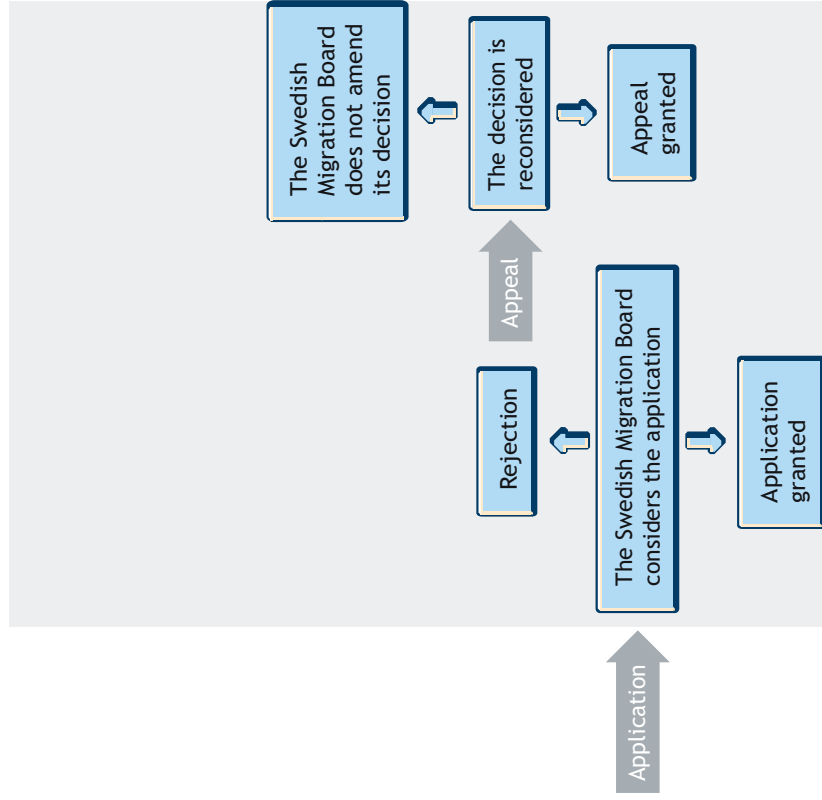
In order for the Migration Court of Appeal to entertain an appeal, leave to appeal must first be granted.

If the Migration Court of Appeal does not grant leave to appeal, the decision of the Migration Court will remain in force and it will not be possible to appeal further.

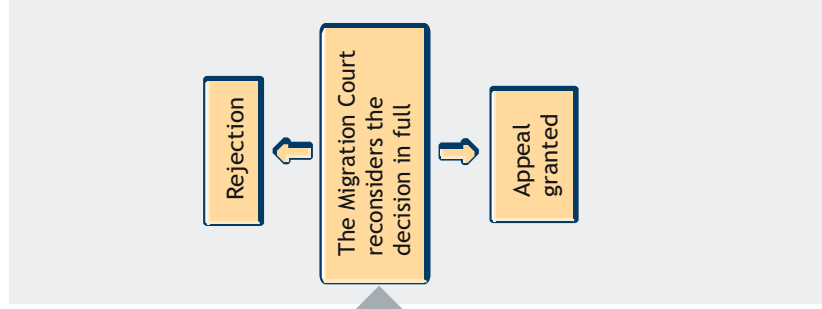
However, if leave to appeal is granted, this means that the case will be considered and determined by the Migration Court of Appeal. The decision will form a precedent and thereby provide guidance for decisions of the Swedish Migration Board and the Migration Courts in similar matters.

The Migration Court of Appeal is the supreme instance and its decisions cannot be appealed against.

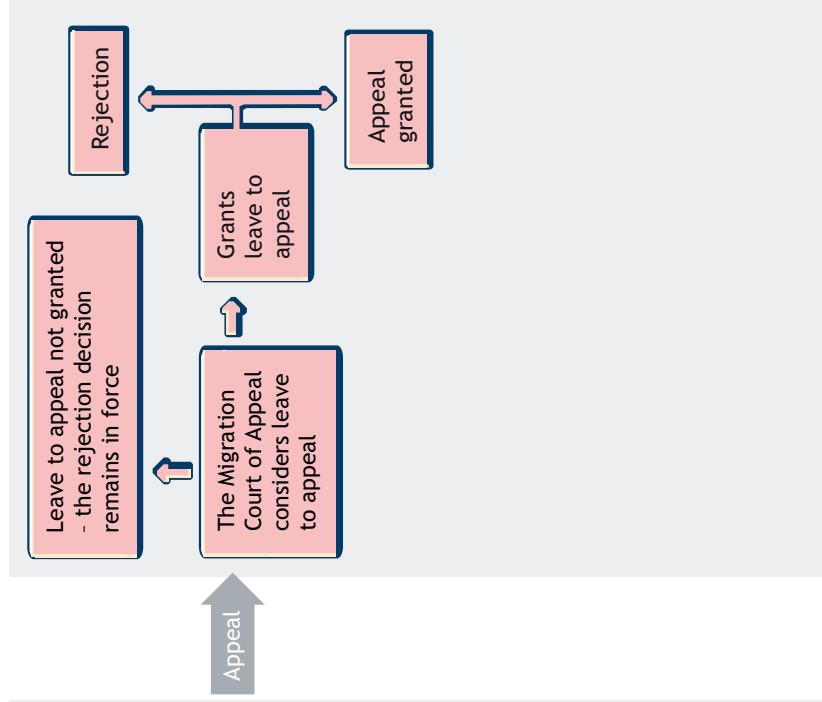
## Swedish Migration Board



## Migration Court



## Migration Court of Appeal



*From application to final determination.*

## Important laws

The Administrative Court Procedure Act (1971:291) states how administration of justice should be conducted in the administrative courts.

The Aliens Act (2005:716) contains important provisions on the processing of aliens matters at the Swedish Migration Board, Migration Courts and at the Migration Court of Appeal.

The Swedish Nationality Act (2001:82) regulates the processing of nationality matters at the Swedish Migration Board, in Migration Courts and in the Migration Court of Appeal.

The Secrecy Act (1980:100) states the preconditions for information being kept secret.

The Act (1994:1219) on the European Convention for the Protection of Human Rights and Fundamental Freedoms

### **More information?**

More information about the Migration Courts and the Migration Court of Appeal is available at the website [www.domstol.se](http://www.domstol.se). The information on the website is updated continuously.

## Contact details for the courts

Administrative Court of Appeal in Stockholm,  
Migration Court of Appeal  
Telephone: 08-700 38 00 (Int. +46 (0)8 700 38 00)

County Administrative Court in the County of Stockholm,  
Migration Court  
Telephone: 08-561 68 500 alt. 08-720 90 00  
(Int. +46 (0)8 561 68 500  
alt. +46 (0)8 720 90 00)

County Administrative Court in the County of Skåne,  
Migration Court  
Telephone: 040-35 35 00 (Int. +46 (0)40 35 35 00)

County Administrative Court in Gothenburg, Migration Court  
Telephone: 031-60 69 00 (Int. +46 (0)31 60 69 00)

[www.domstol.se](http://www.domstol.se)